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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE HUGH FARMER,

Defendant and Appellant.

C081331

(Super. Ct. No. 14F7821)

After his motion to suppress evidence was denied, defendant Jesse Hugh Farmer pled no contest to possessing marijuana for sale. On appeal, defendant contends the trial court erred in denying his motion to suppress because his alleged prolonged detention was an unreasonable seizure under the Fourth Amendment. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On December 3, 2014, at approximately 1:05 p.m., Warden Aaron Galwey, a peace officer for the Department of Fish and Wildlife, was on patrol on Highway 44 in Shasta County when he stopped defendant for speeding. Defendant was driving a rental car. Defendant also had a passenger, John William Frazier, in the car. Within a minute of the stop, Shasta County Sheriff's Sergeant Powell joined Officer Galwey at the scene.

Upon approaching the car, Officer Galwey noticed that defendant appeared to be very nervous. Defendant's hands were trembling and he was shaky when he handed over his documents. While it is not uncommon for the general public to be nervous upon being stopped, typically their nervousness decreases throughout the stop. Defendant's nervousness only increased. When Officer Galwey asked defendant if he had any methamphetamine, cocaine, or heroin, defendant looked directly at Officer Galwey and immediately answered no. When Officer Galwey asked defendant if he had any marijuana, defendant looked down and there was a slight delay before he said no.

Officer Galwey asked defendant where he was going. Defendant said he was coming from Port Angeles, Washington, and going to St. Louis, but Frazier said he was going to Indiana. Defendant then clarified that he was dropping Frazier off in Indiana before going to St. Louis. Officer Galwey thought this was strange since St. Louis is closer than Indiana and Frazier could just as easily drop off the rental car in Indiana instead.

During the stop, defendant provided Officer Galwey with the rental agreement for the car. The agreement showed that the car had been picked up in St. Louis and was to be returned to Seattle. The return date was November 24--nine days before the stop.

At some point during the stop, Frazier related that they were traveling to Reno to switch rental cars in order to get a less expensive car to travel cross country. The car they had already, however, was an economy rental car, and it made no sense to Officer Galwey that they would switch rental cars after already having the first car so long past the original return date.

Based on their travel plans, defendant's nervousness, and his lack of eye contact when he said he did not have any marijuana, Officer Galwey believed defendant might be transporting a large amount of marijuana. At some point during the stop, Sergeant Powell called for a drug-sniffing dog. Officer Galwey issued defendant a citation for speeding and had defendant wait for approximately 10 minutes after the citation was

issued for the dog to arrive. The dog subsequently alerted the officers to the presence of a controlled substance in defendant's car. The ensuing search revealed three duffel bags containing marijuana.

Defendant waived his right to a preliminary hearing and moved to suppress the evidence from the traffic stop. The trial court denied the motion. The trial court found that the totality of the circumstances supported a reasonable delay to wait for the canine unit to arrive on the scene. After his motion to suppress was denied, defendant pled no contest to possession of marijuana for sale. The trial court placed defendant on probation.

DISCUSSION

On appeal, defendant contends Officer Galwey prolonged the traffic stop without justification and thereby violated defendant's Fourth Amendment rights against unreasonable seizure. We disagree.

In reviewing a ruling on a motion to suppress, we defer to the trial court's factual findings, express or implied, when supported by substantial evidence, but we exercise our independent judgment in determining whether, on the facts so found, the search or seizure was lawful. (*People v. Redd* (2010) 48 Cal.4th 691, 719.) In *Rodriguez v. United States* (2015) __ U.S. __, __ [191 L.Ed.2d 492, 496], the United States Supreme Court held that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation." (*Ibid.*) "Authority for the seizure thus ends when [the] tasks tied to the traffic infraction are . . . completed" unless "reasonable suspicion of criminal activity justified detaining [the defendant] beyond completion of the traffic infraction investigation." (*Id.* at p. __ [191 L.Ed.2d at pp. 498, 501].)

Here, Officer Galwey completed the objective of the traffic stop when he issued the citation to defendant for speeding. (See *United States v. Moore* (10th Cir. 2015) 795 F.3d 1224, 1229 [finding that once trooper returned the defendant's license and gave him a warning, he no longer had the authority to detain him absent consent or reasonable suspicion].) Officer Galwey, however, had already observed other suspicious behavior and had defendant wait for an additional 10 minutes after the issuance of the citation for the arrival of the drug-sniffing dog. To justify this further detention of defendant, Officer Galwey must have had reasonable suspicion of further criminal activity. (See *Rodriguez, supra*, ___ U.S. at p. ___ [191 L.Ed.2d at p. 501] [holding that, absent reasonable suspicion, seven- or eight-minute extension of traffic stop in order to conduct canine sniff violated Fourth Amendment].)

Reasonable suspicion requires that “the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231.) The reasonable suspicion standard “is not a particularly demanding one, but is, instead, ‘considerably less than proof of wrongdoing by a preponderance of the evidence.’ ” (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 146.)

Here, we agree with the People that Officer Galwey was aware of specific, articulable facts sufficient to support a reasonable suspicion that defendant was engaged in further criminal activity beyond the speeding for which he was initially stopped. First, defendant was increasingly nervous throughout the encounter. (See *In re H.M.* (2008) 167 Cal.App.4th 136, 144 [“Nervous, evasive behavior is a pertinent factor in determining reasonable suspicion”].) While nervousness is a common and natural response to police confrontation (*United States v. Moore, supra*, 795 F.3d at p. 1230), defendant's nervousness here was both excessive and atypical (see *ibid.* [giving more weight to an officer's suspicions when nervousness is extreme and persistent]).

Defendant's nervousness continued to increase during the stop. (See, e.g., *ibid.* [giving greater weight to nervousness to officer's suspicion when the defendant's nervousness remained throughout the encounter].) Furthermore, defendant was noticeably more nervous when Officer Galwey asked him about marijuana as contrasted with asking about other drugs. Under these circumstances, Officer Galwey's suspicion that defendant was transporting marijuana was reasonable. This suspicion was further supported by the circuitous route of defendant's travel plans, the plan to switch cars in Reno, and the contrast between the pair's direction of travel and the rental car agreement. (See *United States v. Woods* (8th Cir. 2016) 829 F.3d 675, 680 [finding discrepancy between the defendant's account of his trip and the passenger's account contributed to the officer's reasonable suspicion].) Under all of the circumstances here, Officer Galwey was justified in extending the traffic stop by approximately 10 minutes beyond issuance of the citation to wait for the arrival of the canine unit. (See *United States v. Bloomfield* (8th Cir. 1994) 40 F.3d 910, 917-919 [holding that one-hour detention waiting for canine was lawful when officer had reasonable suspicion of drug-related activity based on the totality of the circumstances].)

DISPOSITION

The judgment is affirmed.

/s/
Robie, Acting P. J.

We concur:

/s/
Mauro, J.

/s/
Duarte, J.